

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of
INMAN/SCHEIBE/RASMUSSEN, Minors.

UNPUBLISHED

August 12, 2014

No. 320088
Dickinson Circuit Court
Family Division
LC No. 13-000503-NA

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's termination of her parental rights to her four children under MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). Because the trial court did not clearly err in determining that statutory grounds for termination had been met and that termination was in the children's best interests, we affirm.

In February 2013, respondent was criminally charged with felony delivery of a controlled substance and maintaining a drug house. On February 13, 2013, a petition was filed to take respondent's minor children, EI, MI, KS, and AR, into protective custody. The petition alleged that MI, EI, and KS had been removed from respondent's care in 2009 for reasons that included respondent's substance abuse. The petition further alleged that respondent and the children had been evicted from their rent-free home in September 2012 because respondent failed to pay utility bills, despite respondent's receipt of assistance for utilities and her other income in the form of death benefits for AR and child support for EI and MI. Additionally, it was alleged that respondent had, since her eviction, moved herself and the children to the homes of various friends, without any stability. Further, according to the petition, respondent's live-in boyfriend, who had an extensive and violent criminal history, had recently been convicted of assaulting and battering a 16-year-old boy and had been charged with sexually assaulting one of respondent's children. In addition, EI and MI had excessive school absences, difficulty reading, and showed undue signs of hunger at school. The petition was authorized, and KS was placed with her paternal grandmother; the remaining children were placed in foster care.¹

¹ During the course of proceedings, respondent's parents, who lived in the State of Washington, requested an Interstate Compact on the Placement of Children for placement of the children in

At a plea hearing on April 16, 2013, respondent admitted that statutory grounds for exercising jurisdiction over her children were supported by clear and convincing evidence. Specifically, respondent admitted: (1) her eviction for nonpayment of utilities despite her receipt of assistance and income, (2) her move thereafter from home to home in a manner inappropriate for her children, (3) her former boyfriend's guilty plea to assault and battery of a 16-year-old boy as well as his guilty pleas relating to felony level sexual offenses involving one of her own children, (4) previous instances of domestic violence in the home, particularly when residing with KS's father, (5) a history of substance abuse, (6) MI's and EI's excessive absences and difficulty reading, (7) respondent's felony drug charges in February 2013, and (8) the removal of EI, MI, and KS in 2009. The trial court ordered respondent to undergo a substance abuse assessment and comply with random drug screening, and further ordered that respondent's then-boyfriend (not the man accused of sexually assaulting one of respondent's children) could not be present with the children during respondent's parenting time with the children.

At a May 2013 dispositional hearing, the trial court said it believed that reasonable efforts were being made toward reunification. About three weeks later, respondent's caseworker filed a motion to show cause, alleging that respondent violated the court's prior order of disposition, in part, by failing to report for random drug screens. After respondent conceded that she failed to report for random drug screens and to "call in" as required, the court found respondent in contempt of court and sentenced her to seven days in jail.

Respondent's substance abuse issues continued, and, a month later, at a dispositional review hearing, the trial court noted that respondent tested positive for high levels of metabolites of alcohol on June 19, 2013, and tested positive for codeine and morphine on June 28, 2013. Respondent acknowledged having a substantial substance abuse issue and stated that she was going to obtain treatment after she got out of jail. At a subsequent permanency planning hearing, the trial court noted that respondent's probation agent reported that since the August 1, 2013, respondent had refused to make herself available for a scheduled home inspection. The court concluded that respondent had wholly failed to comply with portions of her case service plan. As a result, the trial court authorized the filing of a termination petition. Thereafter, respondent began a 21-day in-patient treatment program for substance abuse on November 4, 2013, from which she was discharged on November 25, 2013, at which time the treatment facility indicated that respondent "successfully completed 21 days of adult residential treatment"

A termination hearing was held on December 20, 2013. A foster-care worker testified that in the two-and-a-half weeks between respondent's release from jail on October 14, 2013 and the beginning of her substance abuse treatment respondent had not had any visits with the children or made any telephone calls to them. Further, although respondent's children visited on three occasions while respondent received treatment, no telephone calls to the children were recorded during that time. According to the foster-care worker, respondent said she had too

their home. However, on July 2, 2013, the Washington Department of Social Health Systems prepared a home study report for respondent's parents, which indicated that respondent's mother had a criminal history, including a pending assault charge, and respondent's father had suffered a brain injury, was disabled, and had end-stage renal failure. It appeared clear that respondent's parents were not a suitable placement for the children.

many other things to take care of at that time. After respondent's release, visits were scheduled but, excepting the occasion when transportation was provided to respondent, she made no arrangements to attend the scheduled visits. Regarding respondent's housing situation, the foster-care worker stated, and respondent confirmed, that after her release from in-patient substance abuse treatment, respondent was living with two men in the house where she had previously been living, a house which was perceived by those in the area as a "drug house" and outside of which a man had recently been arrested. Respondent, cognizant of these concerns, conceded that her current housing was not a good placement for the children. Respondent had made some strides in employment, obtaining employment at a Wendy's restaurant. Although there was no positive evidence that respondent had consumed alcohol or drugs since her release from jail, her long-standing substance abuse issues remained a concern, prompting the foster-care worker to estimate that it would take at least six months to a year of complete sobriety to fully and accurately assess respondent's mental health.

The foster-care worker also opined that termination was in the children's best interests. He believed respondent loved her children, but testified that she lacked the capacity to maintain her recovery long term and to take care of the children on her own. Respondent testified that she loved her children and felt bonded to all of them, but she conceded that she did not think that she had "done enough" at that point in the proceedings to merit the return of her children at that time. She acknowledged that she had procrastinated in obtaining services and that she was not currently in a position to take the children due to her sobriety.

The trial court concluded that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and that termination was in each child's best interests. Plaintiff now appeals as of right, arguing that the trial court clearly erred in finding statutory grounds for termination and in determining termination was in the children's best interests.

To terminate parental rights, at least one of the statutory grounds for termination under MCL 712A.19b(3) must have been proven by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The petitioner must also prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 83, 90; 836 NW2d 182 (2013). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

We review for clear error the trial court's decision that a ground for termination has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). This Court also reviews the trial court's best interests determination for clear error. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). A decision is "clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent first argues that the trial court clearly erred in determining that there were grounds to terminate her parental rights under MCL 712A.19b(3)(c)(i). MCL 712A.19b(3)(c)(i) permits termination when:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The conditions leading to the adjudication in this case included respondent's lack of appropriate housing, her associations with men who posed a danger to her children, her substance abuse, and her lack of initiative regarding her children's care. On appeal, respondent maintains that she has ended her relationships with men of dubious character, she could have rectified her housing situation in a reasonable time, she had demonstrated initiative with the children's care, and she had taken steps to address her substance abuse problem and would have been able to fully resolve her substance abuse issues in a reasonable time.

Contrary to respondent's arguments on appeal, by her own account, her current housing situation was not suitable for the children and, because of her criminal history, respondent's efforts to obtain suitable housing had proven unsuccessful. Thus, the trial court was not presented with any evidence indicating that respondent was on the verge of obtaining suitable housing. Further, although respondent maintains she no longer has a dating relationship with men of questionable character, the evidence showed that she currently resides with two men in a commonly known drug house, meaning that she has an on-going relationship, be it romantic or otherwise, with men of questionable character in an environment ill-suited for the care of her children. When viewed in combination with respondent's history of associating with men dangerous to the children, the trial court did not clearly err in concluding that respondent had not yet rectified this condition.

Regarding her substance abuse issues, respondent conceded that her substance abuse issues are serious and long lasting, and that these issues remained a barrier to taking custody of her children. By respondent's own admission, she began using marijuana at the age of 12, progressing to cocaine, crystal meth, and Ritalin. Respondent's children had previously been removed in 2009 for reasons that included her substance abuse, and she received numerous services as a result. Yet, she continued to abuse drugs after those proceedings and subsequently committed two felony drug crimes. During the present proceedings, she continued to struggle, testing positive for drugs, failing to appear for random drug testing, and failing to call in as required. While respondent successfully completed a 21-day in-patient treatment program, she admitted that she procrastinated in obtaining treatment and, after her release, she failed to comply with the recommendation that she attend twice-weekly meetings. Respondent's progress toward sobriety is to be commended, but it is an initial effort coming too little too late, and it does not show a reasonable likelihood that this condition would be rectified within a reasonable time given the children's ages. Indeed, the foster-care worker estimated it would take at least six

months to a year of complete sobriety to even fully and accurately assess respondent's mental health. Given respondent's long-running history of substance abuse, the trial court did not clearly err in determining she could not rectify this concern in a reasonable time.

Regarding respondent's lack of initiative concerning her children, the trial court was also presented with evidence that respondent had only the very barest of contact with the children (one phone call to KS) during the period between her release from jail and the beginning of her in-patient drug treatment program, that she requested visits with the children on an infrequent basis, and that she had no recorded telephone contact with her children while in treatment. Although respondent explained that she believed she did not have the right to contact her children at times, she admitted that she did not discuss or make any effort to resolve this with her attorney. Further, despite respondent's claims that she lacked transportation to see her children, KS's paternal grandmother testified that respondent refused her offers to provide transportation. On this evidence, the trial court did not clearly err in concluding that respondent had not rectified her lack of initiative regarding the children, and that the evidence did not reasonably suggest that she would rectify this problem within a reasonable period of time.

Next, respondent argues that the trial court clearly erred in determining that there were grounds to terminate respondent's parental rights under MCL 712A.19b(3)(g), which permits termination where "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Specifically, respondent argues that the trial court's finding in this regard was clearly erroneous because there was evidence that respondent had made progress toward addressing her addiction, she had found employment, and she was looking for suitable housing. Respondent argues that, had her trajectory of progress continued, it would have been feasible that the children could have been returned to her in a reasonable time.

Contrary to respondent's arguments, the evidence shows that respondent had a long history of failing to provide for the care and custody of her children, and there was no reasonable expectation that she could provide such care and custody within a reasonable time. Three of respondent's children were removed in 2009, at which time she received numerous services, and yet, thereafter, she continued to struggle with addiction and failed to provide suitable care and custody for her children. Despite receiving \$835 per month in death benefits, \$484 per month in alimony, and \$450 dollars from petitioner in July 2012 for her electric bill, respondent was unable to pay the utility bills necessary to maintain her rent free housing. As a result, she and her children were evicted and she thereafter moved the children from home to home in a manner which she admits was not appropriate for the children. EI and MI had excessive absences from school, negatively impacting their readings abilities. Respondent also allowed a man with an extensive and violent criminal history to live with her and the children, and this man was later accused of sexually assaulting one of her own children. Further, respondent was convicted and sentenced to jail for committing felony drug offenses while still maintaining custody of the children. Ultimately, her recent efforts toward achieving sobriety were minor attempts in comparison to the length of her addiction, and she admitted that she was not attending support meetings as often as she should have been. Moreover, respondent did not have any leads toward obtaining suitable housing for the children despite her efforts, and she continued to live in a known drug house. Thus, the trial court did not err in concluding that the evidence was

insufficient to create a reasonable expectation that she could provide proper care and custody for her children in a reasonable time.

Nor do we believe the court erred, as argued by respondent, in determining that there were grounds to terminate respondent's parental rights under MCL 712A.19b(3)(j). MCL 712A.19b(3)(j) permits termination where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." There is no dispute that respondent had previously endangered the children by exposing them to a man with a violent criminal history. Even after he was charged with the assault and battery of a minor and suspected of committing a felony sexual assault against one of respondent's children, respondent continued to allow this man to reside with her and her children. Respondent also admitted that there had been domestic violence and substance abuse issues with KS's father. Despite the court's expressed concern about her choices of male companions and the danger they posed to her children, at the time of the termination hearing, respondent resided with two men in a known drug house. In short, the evidence showed that respondent continued to make many of the same choices which had previously endangered her children and thus the trial court did not clearly err in determining there was a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to her care.

Lastly, respondent argues that the trial court clearly erred in determining that termination was in the children's best interests.² "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted). The court may also consider "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714.

In this case, although there was some evidence to support respondent's assertion that she had a bond with her children, the trial court found there was evidence that respondent's bond with her children was not a healthy one and the record supports this conclusion. As discussed, respondent had a lengthy history of substance abuse that contributed to the removal of three of her children in 2009. Despite this removal and the provision of services at that time, respondent failed to adequately address her problems in the long term. She continued to struggle with addiction, and faced two felony drug charges. She and her children were evicted from their housing after she failed to pay utilities, even though she had income and other assistance that she could have used for payment of her bills. She still had not managed to find suitable housing for her children, a process made more difficult by her criminal history, and she continued to reside in

² Contrary to respondent's assertion on appeal, the trial court was not required to consider the child-custody factors set forth in MCL 722.23. See *In re JS & SM*, 231 Mich App 92, 102-103; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich at 353.

a known drug house. The children had a poor school record while in respondent's care. Further, respondent also failed to abide by the treatment service plan, missing drug tests and failing to call in as required. Even after completing an in-treatment program, she failed to attend the recommended number of meetings. Over several years she had shown a repeated inability to provide her children with permanency and stability, and had instead opened her home to men who posed a danger to the welfare of her children. Added to all this is respondent's failure to maintain steady contact and communication with her children during the course of the proceedings below. In comparison, the evidence suggested that the children were doing well in their respective placements. On these facts, even if respondent has made some recent progress toward sobriety, the trial court did not clearly err in determining that termination was in the children's best interests.

Related to her best interests argument, respondent asserts that a guardianship with her parents in Washington state should have been imposed under MCL 712A.19a(7)(c), and she faults the trial court for failing to address the potential for a guardianship in its best-interest analysis. Respondent's reliance on MCL 712A.19a(7)(c) is misplaced, however, as it only applies before the termination of parental rights, where "the agency demonstrates under subsection (6) that initiating the termination of parental rights to the child is clearly *not* in the child's best interests, or the court does *not* order the agency to initiate termination of parental rights to the child under subsection (6)." (Emphasis added.) Further, MCL 712A.19a(7)(c) permits the appointment of a guardian only whether the guardianship is "in the child's best interests," and the trial court was presented with ample evidence supporting the conclusion that a guardianship with respondent's parents was not in the children's best interests. Specifically, the record contained a preliminary report prepared by the Washington Department of Social Health Systems that stated that respondent's mother had a pending criminal charge for assault and that her father had suffered a brain injury, was disabled, and had end-stage renal failure; respondent does not deny the existence of those circumstances. And, in any event, the foster care worker testified that respondent's parents withdrew their request for placement, meaning placement with her parents does not appear to have been an option. Accordingly, respondent has failed to show that the trial court clearly erred in determining that it was in the best interests of the children to terminate respondent's parental rights.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra